

REMARKS

The Examiner requested that Applicants inform the Examiner of related applications, patented, pending or abandoned. U.S. Patent Application 10/721,031 is a continuation-in-part application of the current application and is currently pending (allowed, per courtesy call of Examiner Gitomer). U.S. Patent Application 11/248,650 (7098USC1) is a divisional application of the current application and is also currently pending (allowed). At the time of filing the last correspondence, the '031 application was not allowed and thus was not indicated as being allowed in the correspondence.

Applicants petition herein under 37 C.F.R. 1.182 for withdrawal of the two terminal disclaimers filed April 25, 2007 to overcome the rejection of claims 1, 2, 3-17, 19-36, 52 and 53 of the subject application on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-36 of copending Application No. 10/721,031 (7098USP1), and over claims 1-36 of copending application 11/248,650 (7098USC1). Applicants regret not raising these arguments earlier, but request the Examiner to consider the arguments now, in view of the claims which have been allowed in these related applications.

With regard to co-pending Application No. 11/248,650 (7098USC1), the overlapping claims 1-36 of 11/248,650 (7098USC1) have been cancelled. The co-pending Application No. 11/248,650 (7098USC1) was recently determined to be a divisional of the current application, and not a continuation application, as previously stated. The requirement for restriction was imposed April 24, 2006 in Application No. 11/248,650 (7098USC1), requiring election of the claims of either Group I (claims 1-36) or Group II (Claims 37-51). However, this requirement merely reiterated the requirement for restriction that was earlier imposed on December 22, 2005 in the subject (parent) application, requiring election of the claims of either Group I (claims 1-17 and 19-36; claim 18 having been canceled) or Group II (Claims 37-51). Accordingly, election of differing claims in Application

No. 11/248,650 (7098USC1) and the subject application and creation of the divisional relationship between the applications was done in response to a restriction requirement, and not of applicants' own accord. 35 U.S.C. § 121 generally prohibits such a double patenting rejection where the claimed subject matter is presented in a divisional application as a result of a restriction requirement.

With regard to co-pending Application No. 10/721,031 (7098USP1), this application is a later-filed continuation-in-part application of the subject application. The overlapping claims 1-36 of Application No. 10/721,031 (7098USP1) have been cancelled, and the allowed claims are directed to subject matter that differs and was newly added in the continuation-in-part (e.g., stable test samples). Applicants respectfully submit that the allowed claims of Application No. 10/721,031 (7098USP1) cannot be considered obvious over the claims of the subject application, and vice versa.

In the event that this petition is not granted, and in view of the fact that terminal disclaimers were not filed in Application Nos. 11/248,650 (7098USC1) and 10/721,031 (7098USP1), Applicants acknowledge that the filing of a terminal disclaimer to obviate a rejection based on nonstatutory double patenting is not an admission of the propriety of the rejection but simply serves the statutory function of removing the rejection of double patenting.

CONCLUSION

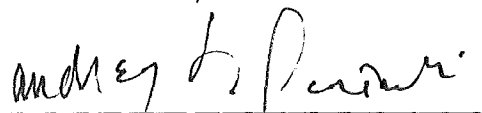
Applicants respectfully submit that the claims are now in condition for allowance. Accordingly, a Notice of Allowance is believed in order and is respectfully requested.

Should the Examiner have any questions concerning the above, she is respectfully requested to contact the undersigned at the telephone number listed

below. If the Examiner notes any further matters which the Examiner believes may be expedited by a telephone interview, the Examiner is requested to contact the undersigned.

ABBOTT LABORATORIES
Customer No. 23492
Telephone: (847) 938-3440
Facsimile: (847) 938-2623

Respectfully submitted,
Judith Friese, et al.

A handwritten signature in cursive script, appearing to read "Audrey L. Bartnicki", written over a horizontal line.

Audrey L. Bartnicki
Registration No. 40,499
Attorney for Applicants